

AMENDED IN SENATE APRIL 21, 2005

AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 328**

**Introduced by Senator Cedillo**

February 16, 2005

---

An act to ~~amend Section 14085.6 of~~ *add Section 14084.5 to* the Welfare and Institutions Code, relating to hospitals.

LEGISLATIVE COUNSEL'S DIGEST

SB 328, as amended, Cedillo. Health facilities: ~~economically endangered: reimbursement program.~~ *Medi-Cal reimbursement: selective provider contracts.*

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services and under which qualified low-income persons are provided with health care benefits, including hospital services.

~~Under existing law, each hospital contracting to provide services under the Medi-Cal program pursuant to a selective provider contract that falls into any one of 5 categories, is able to demonstrate a purpose for additional funding under the program, and meets the criteria contained in the state Medicaid plan for disproportionate share hospital status is eligible to negotiate with the commission for distributions from the Emergency Services and Supplemental Payments Fund.~~

~~This bill would permit, as a condition for a selective provider hospital to negotiate for program funding, the hospital to either meet the criteria for disproportionate share hospital status or be an essential service hospital, as defined under the bill.~~

*Existing law authorizes the special negotiator to negotiate selective provider contracts with eligible hospitals to provide inpatient hospital services to Medi-Cal beneficiaries.*

*The bill would require the special negotiator, in negotiating selective provider contracts, to provide a per diem rate that is reflective of the cost of providing care for any hospital that is not a disproportionate share hospital and that meets 7 conditions, including that the hospital has for the previous 3 years been a contracting hospital providing basic emergency services or comprehensive emergency medical services, maintained obstetrical services and a neonatal intensive care unit, and sustained a minimum level of operating losses.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 14084.5 is added to the Welfare and
- 2     Institutions Code, to read:
- 3     14084.5. (a) The special negotiator, in negotiating contracts,
- 4     shall provide a per diem rate that is reflective of the cost of
- 5     providing care for any hospital that is not a disproportionate
- 6     share hospital and that meets all of the following criteria:
- 7         (1) Is a contracting hospital under this article and has been
- 8         for the previous three years.
- 9         (2) Is located within five miles of a county operated general
- 10        acute care hospital licensed pursuant to Section 1250 of the
- 11        Health and Safety Code.
- 12        (3) Had 7,000 inpatient acute care, excluding psychiatric and
- 13        rehabilitation, Medi-Cal days or more in the previous year.
- 14        (4) Is, and has been for the previous three years, either one of
- 15        the following:
- 16            (A) A licensed provider of basic emergency services as
- 17            described in Sections 70411 and following of Title 22 of the
- 18            California Code of Regulations.
- 19            (B) A licensed provider of comprehensive emergency medical
- 20            services as defined in Sections 70451 and following of Title 22 of
- 21            the California Code of Regulations.
- 22        (5) Had at least 20,000 emergency department visits in the
- 23        prior year.

1 (6) Has an existing obstetrical services and a neonatal  
2 intensive care unit and has had these services for the previous  
3 three years.

4 (7) Has a sustained operating loss, excluding the payments  
5 received from Medi-Cal pursuant to this section and all  
6 nonoperating revenues, including donations and income from  
7 investments, of three million dollars (\$3,000,000) or more a year  
8 for each of the most recent three years as reflected in the  
9 hospital's audited financial statements.

10 (b) The contract term may be set at the discretion of the  
11 special negotiator and the hospital, but shall not be less than one  
12 year.

13 (c) The department shall seek federal financial participation  
14 for expenditures made pursuant to this section to the full extent  
15 permitted by federal law.

16 (d) The department shall promptly seek any necessary federal  
17 approvals regarding this section.

18 SECTION 1. ~~Section 14085.6 of the Welfare and Institutions~~  
19 ~~Code is amended to read:~~

20 ~~14085.6. (a) Except as stated in subdivision (g), each hospital~~  
21 ~~contracting to provide services under this article that meets the~~  
22 ~~criteria contained in the state Medicaid plan for disproportionate~~  
23 ~~share hospital status shall be eligible to negotiate with the~~  
24 ~~commission for distributions from the Emergency Services and~~  
25 ~~Supplemental Payments Fund, which is hereby created. All~~  
26 ~~distributions from the fund shall be pursuant to this section.~~

27 ~~(b) (1) To the extent permitted by federal law, the department~~  
28 ~~shall administer the fund in accordance with this section.~~

29 ~~(2) The money in this fund shall be available for expenditure~~  
30 ~~by the department for the purposes of this section, subject to~~  
31 ~~approval through the regular budget process.~~

32 ~~(c) The fund shall include all of the following:~~

33 ~~(1) Subject to subdivision (f), all public funds transferred by~~  
34 ~~public agencies to the department for deposit in the fund, as~~  
35 ~~permitted under Section 433.51 of Title 42 of the Code of~~  
36 ~~Federal Regulations or any other applicable federal Medicaid~~  
37 ~~laws. These transfers shall constitute local government financial~~  
38 ~~participation in Medi-Cal as permitted under Section 1902 (a)(2)~~  
39 ~~of the Social Security Act (Title 42 U.S.C. Sec. 1396a(a)(2)) and~~  
40 ~~other applicable federal Medicaid laws.~~

~~(2) Subject to subdivision (1), all private donated funds transferred by private individuals or entities for deposit in the fund as permitted under applicable federal Medicaid laws.~~

~~(3) Any amounts appropriated to the fund by the Legislature.~~

~~(4) Interest that accrues on amounts in the fund.~~

~~(5) Moneys appropriated to the fund, or appropriated for poison control center grants and transferred to the fund, pursuant to the annual Budget Act.~~

~~(d) Amounts in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures for purposes of payments under this section.~~

~~(e) Distributions from the fund shall be supplemental to any and all other amounts that hospitals would have received under the contracting program, and under the state Medicaid plan, including contract rate increases and supplemental payments and payment adjustments under distribution programs relating to disproportionate share hospitals.~~

~~(f) Distributions from the fund shall not serve as the state's payment adjustment program under Section 1923 of the Social Security Act (42 U.S.C. Sec. 1396 r-4). To the extent permitted by federal law, and except as otherwise provided in this section, distributions from the fund shall not be subject to requirements contained in or related to Section 1923 of the Social Security Act (42 U.S.C. Sec. 1396 r-4). Distributions from the fund shall be supplemental contract payments and may be structured on any federally permissible basis, as negotiated between the commission and the hospital.~~

~~(g) In order to qualify for distributions from the fund, a hospital shall meet all of the following criteria:~~

~~(1) Be a contracting hospital under this article.~~

~~(2) Satisfy either of the following:~~

~~(A) Satisfy the state Medicaid plan criteria referred to in subdivision (a).~~

~~(B) Be an essential service hospital. For purposes of this section, an "essential service hospital" means a hospital that meets all of the following requirements:~~

1 (i) Has had a Medi-Cal contract pursuant to Section 14165 for  
2 the prior three years.

3 (ii) Has operated for the prior three years, and is currently  
4 operating on site, an emergency room that provides basic or  
5 comprehensive emergency services, a neonatal intensive care  
6 unit, and obstetrical services.

7 (iii) Has reported net operating losses, exclusive of  
8 supplemental payments received under this section, in excess of  
9 three million dollars (\$3,000,000) for each of the hospital's prior  
10 three fiscal years.

11 (3) Be one of the following:

12 (A) A licensed provider of basic emergency services as  
13 described in Sections 70411 and following of Title 22 of the  
14 California Code of Regulations.

15 (B) A licensed provider of comprehensive emergency medical  
16 services as defined in Sections 70451 and following of Title 22  
17 of the California Code of Regulations.

18 (C) A children's hospital as defined in Section 14087.21 that  
19 satisfies subparagraph (A) or (B) or that jointly provides basic or  
20 comprehensive emergency services in conjunction with another  
21 licensed hospital.

22 (D) A hospital owned and operated by a public agency that  
23 operates two or more hospitals that qualify under subparagraph  
24 (A) or (B) with respect to the particular state fiscal year.

25 (E) A hospital designated by the National Cancer Institute as a  
26 comprehensive or clinical cancer research center that primarily  
27 treats acutely ill cancer patients and that is exempt from the  
28 federal Medicare prospective payment system pursuant to  
29 Section 1886(d)(1)(B)(v) of the Social Security Act (42 U.S.C.  
30 Sec. 1395ww(d)(1)(B)(v)).

31 (4) Be able to demonstrate a purpose for additional funding  
32 under the selective provider contracting program including  
33 proposals relating to emergency services and other health care  
34 services that are made available, or will be made available, to  
35 Medi-Cal beneficiaries.

36 (h) (1) The department shall seek federal financial  
37 participation for expenditures made from the fund to the full  
38 extent permitted by federal law.

39 (2) The department shall promptly seek any necessary federal  
40 approvals regarding this section.

~~(i) Any funds remaining in the fund at the end of a fiscal year shall be carried forward for use in following fiscal years.~~

~~(j) For purposes of this section, “fund” means the Emergency Services and Supplemental Payments Fund.~~

~~(k) (1) Any public agency transferring amounts to the fund, as specified in paragraph (1) of subdivision (c), may for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public funds or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.~~

~~(2) Notwithstanding paragraph (1), a public agency may transfer to the fund only those moneys that have a source that will qualify for federal financial participation under the provisions of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or other applicable federal Medicaid laws.~~

~~(l) Public funds transferred pursuant to paragraph (1) of subdivision (c), and private donated funds transferred pursuant to paragraph (2) of subdivision (c), shall be deposited into the fund, and expended pursuant to this section. The director may accept only those funds that are certified by the transferring entity as qualifying for federal financial participation under the terms of the Medicaid Voluntary Contributions and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) and may return any funds transferred in error.~~

~~(m) The department may adopt emergency regulations, if necessary, for the purposes of this section.~~

~~(n) The state shall be held harmless from any federal disallowance resulting from this section. A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section with respect to that hospital. The state may recoup that federal disallowance from the hospital in any manner authorized by law or contract.~~